



JUSTICE ADMINISTRATION DEPARTMENT



POLICY

U visa: A Critical Tool for Law Enforcement to Support Survivors of Crime and Build Community Resiliency

October 12th, 2021

Harris County U visa Certification Model Policy

(reviewed and approved by the County Attorney's Office)

	DEPARTMENT
	GENERAL ORDERS, POLICIES, AND PROCEDURES
	Enforcement Operations
	Specialized Situations and Services

Department	Date of Issue	Page	Number
Subject: CERTIFICATION OF U VISA NON- IMMIGRANT STATUS (FORM I-918, SUPPLEMENT B)		BY AUTHORITY OF	

I. Purpose

The purpose of this General Order is to establish guidelines and procedures for officers who receive requests for a U visa Certification (Form I-918, Supplement B). This General Order also specifies the Certifying Official who will sign Form I-918, Supplement B.

II. Definitions

A. **"Qualifying criminal activity"** is defined by statute to be "activity involving one or more of the following or any similar activity in violation of federal, state, or local criminal law." The statute also includes the attempt, conspiracy, or solicitation to commit any of the crimes listed below:

- Abduction
- Abusive sexual contact
- Blackmail
- Domestic violence
- Extortion
- False imprisonment
- Felonious assault
- Unlawful criminal restraint
- Being held hostage
- Incest

- Involuntary servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of justice
- Peonage
- Female genital mutilation
- Prostitution
- Stalking
- Rape

- Sexual assault
- Sexual exploitation
- Slave trade
- Torture
- Trafficking
- Perjury
- Witness tampering
- Other related crimes

- B. “Any Similar Activity” refers to other criminal activity when the similarities are substantial, and the nature and elements of the criminal activity are comparable.
- C. The “U visa” is the common name for the U nonimmigrant status.
- D. Signing U.S. Citizenship and Immigration Services’ (USCIS) Form I-918B (Supplement B, U Nonimmigrant Status Certification) does not grant the applicant a U visa or any status in the United States currently. It is one piece of an application a survivor needs to submit to USCIS, the agency that will make the ultimate determination of granting a U visa or not.
- E. Any certifying official may sign Form I-918B. The U visa regulation defines a Certifying Official as “[t]he head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or [a] federal, state, or local judge.”¹

III. Policy

- A. It is the policy of Harris County to assist immigrant crime victims with their U visa applications. U visas:
 - 1. Strengthen law enforcement’s ability to detect, investigate, and prosecute serious crimes, such as domestic violence, sexual assault, and human trafficking;
 - 2. Encourage victims to report crimes committed against them and participate in the investigation and prosecution of those crimes, even if victims lack lawful immigration status; and
 - 3. Offer protections to victims of qualifying crimes in keeping with the humanitarian interests of the United States.
- B. When a U visa request is made the Certifying Official shall review the request and certify or deny the request based on USCIS criteria. Each request shall be reviewed on an individual basis by confirming the following information:
 - 1. The individual is a victim of a qualifying criminal activity;
 - 2. The individual has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity (or is exempt), and has complied with all reasonable requests to assist law enforcement;
 - 3. The information listed on the form is accurate to the best of your knowledge; and
 - 4. You have direct knowledge of the information listed (or have reviewed relevant records).

¹ 8 C.F.R. § 214.14(a)(3)

IV. Procedure

Before completing a Form I-918, Supplement B (a request for a U visa certification), the Certifying Official shall have verified the following:

A. The noncitizen was or is a

1. Direct Victim:

- a victim of a criminal activity (listed in Part II-A above) that took place in the United States or its territories or occurred outside the United States but violates U.S. extraterritorial law; or

2. Indirect Victim:

- the spouse or under-21-year-old child of a victim who is deceased because of murder or manslaughter, or who is incompetent or incapacitated; or
- the parents and unmarried under-18-year-old siblings of an under-21-year-old victim who is deceased because of murder or manslaughter, or who is incompetent or incapacitated.

3. Bystander:

- An individual who was not the direct target of a crime, but who nevertheless suffered “unusually direct injury” as a result of the qualifying crime. Though a bystander/witness victim requires an “unusually direct injury” for the purposes of DHS adjudicating U visa status, **the certifying official does not need to make the determination** of “unusually direct injury” when completing Form I-918B; the applicant will need to provide it elsewhere with their application. USCIS will make the ultimate determination of whether the applicant suffered an “unusually direct injury” as a result of a qualifying crime.

B. Was the criminal case handled by this agency?

1. The Certifying Official may be from the agency investigating the case or the agency prosecuting the case (i.e., Harris County District Attorney’s Office). Either may serve as the certifying agency or Certifying Official if requested by the survivor or their legal counsel. For instance, even if no charges have been filed, the District Attorney’s Office can still sign the certification (they can consult the agency to which the victimization was reported to verify case facts). Further, if charges have already been filed and the case is in progress, the law enforcement agency which took the report [e.g., HCSO, Constables] can still sign the certification. Judges are also able to sign certifications. Additionally, the case does not need to be successfully prosecuted nor does the person who committed the crime need to be apprehended, since the outcome of a case is not pertinent to U visa certification.

C. The applicant has been, is being, or is likely to be helpful in the investigation.

1. It is Harris County’s policy to presume the helpfulness of the applicant. The policy of presumption of helpfulness means that, in the absence of contradicting evidence, the victim’s helpfulness is presumed.
 - i. The applicant is helpful if they possess information about a qualifying criminal activity; and/or
 - ii. Demonstrates cooperation during the detection or investigation of said activity, even if the investigation is not completed.
 - iii. If the victim has not refused or has not failed to provide information and/or assistance reasonably requested by law enforcement, the victim is considered helpful.

- iv. Victims are not required to show documentary proof of their cooperation as part of their certification request to the agency. To qualify for a U visa, the victim will need to provide evidence to USCIS as part of their application.
 - v. Victims threatened by further acts of violence or who can show evidence of other compelling circumstances (such as homelessness, illness, further threats made against them, or trauma) that prevented cooperation may be able to prove that their decision to stop providing assistance (or inability to) was not unreasonable and, therefore, remain eligible for a U visa certification.
- D. If a victim or the parent, if the victim is a child (child is defined as someone under 21 years of age)², especially a non-verbal child, is willing to assist—or has assisted or was helpful—with detection, investigation, prosecution, conviction, or sentencing of a criminal activity, a U visa certification shall be provided. The agency shall sign a certification even if the incident report is not available (though additional documentation may be required to verify if the applicant was a victim of a qualifying crime and was reasonably helpful, i.e., copy of police report), the investigation is closed, charges for the qualifying crime are never filed before the court, the charges are dropped, no conviction resulted, or the case is incomplete, as long as the victim was reasonably helpful in the investigation and/or prosecution of the offense.
- E. Harm or injury can be noted by the Certifying Official, however this agency should not assess whether an injury rises to the level of “substantial” when deciding to certify. If the Certifying Official cannot determine whether there was harm or injury, they can still sign the U visa certification, as the applicant seeking the U visa will have to independently show harm (psychological or physical) to USCIS. If harm is not noted in any records related to the qualifying criminal activity, this should not preclude signing a U visa certification.
- F. Criminal and immigration history **will not** be considered when deciding whether to certify.
- 1. USCIS will assess this history when adjudicating the case, thus it is not necessary for the certifying agency to consider criminal or immigration history;
 - 2. Furthermore, the agency shall not request additional information from the victim that is not relevant to the U visa certification request.
- G. A certification can be issued any time after the criminal activity occurred. U visa regulations and USCIS allow for certification at any time following the victimization., so no time limit(s) should be imposed for signing certifications.
- H. The applicant can submit the request or a referring legal entity (such as a private attorney or non-profit organization) can do so.³
- I. The request for certification shall be completed within 30 days from the time it was presented to the originating department.
- 1. If the applicant is in immigration removal proceedings, the request shall be completed within 14 days.
 - 2. If the application is detained or there are other compelling circumstances, the request shall be completed within 7 days.

² 8 C.F.R. § 214.14(a)(14)(i)

³ It is not required that an applicant use an attorney, but it is highly recommended to increase the likelihood the application will be accepted by USCIS. In Harris County, law enforcement can refer victims without attorneys to a free immigrant resource hotline that can connect them with non-profit services: 1-833-468-4664. More information at <https://www.houstonimmigration.org/hotline>

- J. U visa certifications are only valid for six (6) months, and compelling circumstances may arise that require a victim to obtain another U visa certification when the initial certification is no longer available or valid. If the initial certification is no longer valid, the agency **shall approve another U visa certification** (i.e., re-certify) at the request of the victim. The presumption of helpfulness remains upon recertification.
- K. The agency will sign the most recent version of Form I-918, Supplement B, which shall be obtained from the United States Citizenship and Immigrant Services website (<https://www.uscis.gov/I-918>), in recognition that USCIS frequently changes the form without sufficient notice to the public.
- L. The agency shall send a written notification of its certification decision to the victim and immigration counsel and, in the case of denials, state the findings and detailed reasons for the denial. Victims may request reconsideration of a denied certification at any time. A supervisor of the Certifying Official shall review all reconsideration requests.
- M. The Certifying Official may contact the VAWA Unit of the U.S. Citizenship and Immigration Services to report the U visa applicant's failure to continue cooperating with the department only when the failure to cooperate is considered unreasonable. To determine whether failure to cooperate is unreasonable, officials should review and consider the victim's history of abuse and victimization, and any threats the victim has experienced or is experiencing, as well as any other relevant factors or compelling circumstances.
- N. When a request is made, the Certifying Official shall complete a U visa tracking sheet which will allow for data on the number of requests, acceptances, denials, and other pertinent information to be collected and submitted to JAD monthly so that such anonymous aggregate data can be publicly available upon request.

V. Implementation Process

- A. Department policy requires its members to distribute to any crime victim an informational packet describing victim services available, including those for immigrant crime survivors (i.e., U visa). The agency should not inquire about or assume immigration status when distributing packets; it shall make this information available to all victims.
- B. The Department shall designate a Certifying Official and provide that person or unit's contact information, including phone number and email on the Departmental website or any location where the Department has information for Victim Services, including updating written materials.